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*Via Electronic Filing*

November 4, 2011

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth St., S.W.  
Washington, DC 20554

*Re: Notice of Ex Parte Presentation – MB Docket No. 11-154*

Dear Ms. Dortch:

This is to notify you that on November 2, 2011, Julie Kearney, Vice President, Regulatory Affairs, Consumer Electronics Association (“CEA”), Brian E. Markwalter, Senior Vice President, Research and Standards, CEA, and Bill Belt, Senior Director, Technology and Standards, CEA, accompanied by Jim Morgan, Sony Electronics, Inc., Paul Schomburg, Panasonic Corporation of North America, John Godfrey, Samsung Information Systems America, Inc., and outside counsel Mark Walker of Wilkinson Barker Knauer, LLP, met with Steve Broeckaert (MB), Krista Witanowski (MB), Alison Neplokh (MB), Jeff Neumann (MB), Diana Sokolow (MB), Tom Apone (MB), Walid Kassem (MB), Karen Peltz Strauss (CGB), Rosaline Crawford (CGB), and Roger Holberg (CGB).

Consistent with its comments and reply comments in the above-captioned proceeding,<sup>1</sup> CEA urged the careful implementation of the IP captioning provisions of Twenty-First Century Communications and Video Accessibility Act (“CVAA”) to ensure that industry has (i) the continued flexibility to innovate and (ii) certainty regarding the scope of its obligations. To help guide the meeting, CEA provided each attendee with the attached agenda that summarizes the items discussed and provides cross-references to the relevant portions of CEA’s comments and reply comments.

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<sup>1</sup> See Comments of CEA, MB Docket No. 11-154 (filed Oct. 18, 2011) (“CEA Comments”); Reply Comments of CEA, MB Docket No. 11-154 (filed Nov. 1, 2011) (“CEA Reply Comments”).

In addition, the following items were discussed during the meeting:

**Phase-in Period.** CEA emphasized the need for at least a 24-month phase-in period to provide industry with the necessary time to comply with the Commission's final IP captioning rules. A phase-in period of at least 24 months is entirely consistent with Commission precedent, including the various phase-in periods provided for closed captioning in digital television receivers,<sup>2</sup> advanced communications services,<sup>3</sup> wireless hearing aid compatibility,<sup>4</sup> E911 location accuracy requirements in handsets,<sup>5</sup> V-Chip requirements in television receivers,<sup>6</sup> CableCARD requirements,<sup>7</sup> and digital tuner requirements for television sets.<sup>8</sup> CEA noted that a phase-in of more than 24 months may be needed depending on the scope of the final rules. Without that 24-month phase-in, the new rules could have an initial chilling effect on the introduction of new video devices by manufacturers due to the inability to make new offerings immediately comply with the final IP captioning rules. Alternatively, covered manufacturers could face pressures to file waiver requests for new video devices, unnecessarily burdening both the Commission and consumers.

**Safe Harbor Based on SMPTE-TT.** CEA explained that its proposed safe harbor based on the relevant portions of SMPTE-TT best balances the need for industry flexibility and certainty.

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<sup>2</sup> See *Closed Captioning Requirements for Digital Television Receivers*, Report and Order, 15 FCC Rcd 16788, 16807-08 ¶¶ 56-58 (2000) (providing a 24-month phase-in period).

<sup>3</sup> See *Implementation of Sections 716 and 717 of the Communications Act of 1934, as Enacted by the Twenty-First Century Communications and Video Accessibility Act of 2010*, CG Docket No. 10-213, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-151, ¶¶ 107-110 (rel. Oct. 7, 2011) ("*ACS Order*") (providing a 24-month phase-in period for compliance of ACS devices). See also *id.* ¶ 110 and accompanying chart (setting forth Commission precedent consistent with a two-year phase-in of similar complex technical requirements).

<sup>4</sup> See *Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones*, Report and Order, 18 FCC Rcd 16753, 16780 ¶ 65 (2003) (providing a 24-month phase-in period to meet the initial wireless hearing aid compatibility requirements).

<sup>5</sup> See *Wireless E911 Location Accuracy Requirements*, Report and Order, 22 FCC Rcd 20105, 20112 ¶ 17 (2007), *voluntarily vacated*, *Rural Cellular Ass'n v. FCC*, 2008 U.S. App. LEXIS 19889 (D.C. Cir. Sept. 17, 2008) (providing a 5-year phase-in period for compliance at the PSAP level).

<sup>6</sup> See *Technical Requirements to Enable Blocking of Video Programming based on Program Ratings*, Report and Order, 13 FCC Rcd 11248, 11257 ¶ 23 (1998) (providing television manufacturers with an approximately 22-month total phase-in period – approximately 16 months for compliance of at least half of their new product models and an additional 6 months for the remaining new models); see also 47 C.F.R. § 15.120.

<sup>7</sup> See *Implementation of Section 304 of the Telecommunications Act of 1996*, Report and Order, 13 FCC Rcd 14775, 14803 ¶ 69 (1998) (providing an approximately 6.5-year phase-in period for CableCARD set-top boxes); see also 47 C.F.R. § 76.1204.

<sup>8</sup> See *Review of the Commission's Rules and Policies Affecting the Conversion To Digital Television*, Second Report and Order and Second Memorandum Opinion and Order, 17 FCC Rcd 15978, 15996 ¶ 40 (2002), as modified, *Requirements for Digital Television Receiving Capability*, Second Report and Order, 20 FCC Rcd 18607, 18607 ¶ 1 (2005) (providing television manufacturers with a phase-in period totaling more than four years); see also 47 C.F.R. § 15.117(i).

Specifically, as proposed in CEA’s initial comments,<sup>9</sup> the Commission should adopt the SMPTE-TT standard (i) as a “safe harbor” interchange standard and (ii) in the case of consumer video players (VPAAC Report – Use Case #1), as a “safe harbor” delivery standard. As a safe harbor, SMPTE-TT would ensure consistency and transparency for entities seeking compliance. In particular, manufacturers of covered apparatus cannot be expected to support each and every possible captioning standard that may be used to transmit IP captioning information under Use Case #1.

**Interconnection Mechanisms and Standards.** CEA explained that no regulation of interconnection mechanisms and standards is needed at this time. Existing as well as emerging interconnection mechanisms already support the pass-through of closed captions to client devices, including MoCA (“Multimedia over Coax Alliance”) and DLNA® (“Digital Living Network Alliance”) home networking technologies. More fundamentally, the emphasis on High Definition Multimedia Interface (“HDMI”) is misplaced because HDMI currently meets the statutory requirement “to permit or render the display of closed captions.”<sup>10</sup> HDMI permits the rendering of closed captions, but it must be understood that the captions and video are decoded in the source device and carried as opened captions to the display, which acts only as a monitor.

Pursuant to Section 1.1206 of the Commission’s rules,<sup>11</sup> this letter is being electronically filed with your office and a copy of this submission is being provided to the meeting attendees from the Commission. Please let the undersigned know if you have any questions regarding this filing.

Respectfully submitted,

/s/ **Julie M. Kearney**

Julie M. Kearney  
Vice President, Regulatory Affairs

cc: Steve Broeckaert  
Krista Witanowski  
Alison Neplokh  
Jeff Neumann  
Diana Sokolow  
Tom Apone  
Walid Kassem  
Karen Peltz Strauss  
Rosaline Crawford  
Roger Holberg

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<sup>9</sup> CEA Comments at 6-7.

<sup>10</sup> 47 U.S.C. § 303(z)(2).

<sup>11</sup> 47 C.F.R. § 1.1206.

**CVAA – IP Closed Captioning NPRM  
(MB Docket No. 11-154)  
CEA *Ex Parte* Meeting Agenda**

November 2, 2011

**1. Introduction/Background on CEA**

- a. Principal U.S. trade association for the consumer electronics and information technologies industries (Com. at 1)
- b. 2,000 member companies that cumulatively generate more than \$190 billion in annual factory sales (Com. at 1-2 n.3)
- c. CEA and its member companies were actively involved in the CVAA legislative process and continue to engage in regulatory and standards activities relating to accessibility, including the VPAAC (Com. at 2)

**2. An Initial Phase-In Period is Essential**

- a. A minimum 24 month phase-in period before commencing enforcement will provide the needed time for covered entities to comply with the final rules (Com. at 22-24; Rep. at 2-3)
- b. This phase-in period is consistent with and supported by FCC precedent implementing similar technical requirements and the record (Com. at 23-24; Rep. at 3)
- c. The Commission should grandfather products released prior to the promulgation of the final rules (Com. at 24)

**3. A Safe Harbor Based on SMPTE-TT Best Balances the Need for Industry Flexibility and Certainty**

- a. The Commission should adopt the SMPTE-TT standard (i) as a “safe harbor” interchange standard and (ii) in the case of consumer video players (VPAAC Report – Use Case #1), as a “safe harbor” delivery standard (Com at 6-7; Rep. at 3)
- b. To be eligible for the safe harbor, a manufacturer or service provider should be required to incorporate only the portion of the SMPTE-TT standard necessary to support the closed captioning functionality set forth in current FCC rules 15.119 and 15.122 (Com. at 7)

**4. The Commission’s Final Rules Should Reflect the Limitations Contained in Section 203 of the CVAA and the Legislative History**

- a. Captioning requirements for receiving or playback apparatus only apply when “technically feasible” and only for apparatus “designed to” receive or playback video programming that is “transmitted” by wire or radio (Com. at 10-14; Rep. at 4-5)
- b. Receiving or playback apparatus with a screen size of less than 13 inches must comply with the caption requirements “only if . . . achievable” (Com. at 14-15; Rep. at 5)
- c. Captioning requirements for recording apparatus only apply “if achievable” and only for such apparatus that is “designed to” record video programming “transmitted” by wire or radio (Com. at 11-15; Rep. at 7)
- d. The “Display-Only” exemption applies to any apparatus that requires a separate source device to render the video content (Com. at 15-16; Rep. at 10-11)
- e. The legislative history makes clear that the requirements of Section 203 only apply to “consumer” devices; thus, commercial video equipment should be excluded from the captioning requirements (Com. at 19)

**5. The Section 203 Closed Captioning Requirements Should Apply Only To The Principal Means of Viewing Video Programming That a Manufacturer Includes in Covered Apparatus**

- a. Consistent with the *ACS Order*, manufacturers of covered apparatus should not be held responsible for whether third-party software downloaded by end users complies with the captioning requirements (Rep. at 7-8)
- b. To comply with Section 203, the manufacturer of a covered apparatus should only have to ensure that the principal means of viewing video programming, included at the time of sale, renders or displays closed captioning when provided in a standard format (Rep. at 8-9)

**6. Waivers Should be Acted Upon Promptly to Provide Certainty and Avoid Inhibiting the Introduction of New Products and Technologies**

- a. The Commission should interpret its Section 203(a) waiver authority consistent with its ACS waiver authority (Com. at 16)
- b. Consistent with the *ACS Order*, “primary design” and “essential utility” should be determined from the perspective of the manufacturer (Com. at 16-17)
- c. The determination of a device’s “essential utility” is statutorily limited to one of the multiple purposes for which the device was designed (Rep. at 6-7)

**7. The Commission Should Adopt Minimum Technical Requirements, If Achievable**

- a. The proposed mandate that IP captioning be “at least the same quality” as television captions would create uncertainty and inhibit innovation (Com. at 4)
- b. Instead, the Commission should adopt minimum technical requirements, if achievable, to help ensure functional equivalency and preserve flexibility (Com. at 4-5)

**8. The Commission Should Defer Making New Rules Regarding Interconnection Mechanisms and Standards and the Retention of User Settings**

- a. No regulation of interconnection mechanisms and standards is needed at this time because existing as well as emerging interconnection mechanisms already support the pass-through of captions to client devices (Com. at 21; Rep. at 10)
- b. Deferring regulations regarding the retention of captioning settings will enable better coordination and harmonization of how the various user accessibility settings will be retained between viewing sessions (Com. at 22)